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SPECIAL CIVIL APPLICATION NO. 11429 OF 1994

Date of decision: 5-12- 1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Mr Hardik Raval for the petitioner

Mr.D.A.Bambania for the respondents.

Coram: S.K. KESHOTE,J
(5-12-1995)

ORAL JUDGMENT:

Heard the learned counsel for the parties. The petitioner is challenging by way of this writ petition the order dated 29-6-1993 annexure-B passed by the Gujarat Secondary Education Board, and the order of respondent No.4 dated 30th March,1994 passed in Appeal filed by the petitioner against the aforesaid order. In the writ petition, the petitioner has not correctly impleaded the parties. The petitioner is Vikalang Sahakar Vidyalaya which cannot be said to be, nor is it the case of the petitioner, a legal entity. From the facts which have been stated in the writ petition as well as from the title of the writ petition, it appears that Vikalang Sahakar Vidyalaya is an educational institution for handicapped persons, which is controlled, managed and run by Navdeep Education Trust, Khedabrahma, District Sabarkantha. The petition should have been filed by the Trust through its managing trustee. It is not the case of the petitioner that Vikalang Sahakar Vidyalaya which is not a legal entity could have applied for registration for secondary school for the handicapped persons. The trust is running a primary school for handicapped children at Khedabrahma, District Sabarkantha. The Trust had applied for registration for starting secondary school for handicapped persons to the Social Welfare Department of the State of Gujarat. The Social Welfare Department of the State of Gujarat informed the Trust that it has no jurisdiction in the matter of grant of registration.

2. On 29th August, 1992 the Trust submitted application before the Gujarat Secondary Education Board for grant of registration for secondary school. The application of the trust aforesaid has been rejected by the Board vide its order at annexure-D dated 29th June, 1993. English translation of the order of the Gujarat Secondary Education Board dated 29th June, 1993.

petitioner. From the order of the Board aforesaid, it gives out that the proposals of the trust for registration of the secondary school was considered by the Committee vide its

resolution dated 16-6-1993 and the Committee has declined to grant registration for secondary section to the Trust on the following three grounds:

"1. As per bye-law 9(12)91)(2), facility of the building is not available there.

2. As per Bye-law 9(7)(1), documentary evidence in support of the financial stability have not been produced.

3. As per Bye-law 9(15), the necessity is not established/justified."

This decision of the Committee has been communicated to the petitioner vide letter annexure-B dated 29th June, 1993. The Trust, dissatisfied with the order of the Board filed appeal before the appellate authority. The appellate authority has afforded full opportunity of hearing to the petitioner. The appellate authority, after hearing the representatives of the trust, approved the resolution of the Committee of the Board declining registration of secondary school to the Trust. The appellate authority has given four reasons for confirming the decision of the Board. The appellate authority held that in the primary school, upon visit made, the strength of the students was found as follows:

Standard I to IV	..	11 students
Standard V	..	5 students
Standard VI	..	5 students
Standard VII	..	6 students.

Taking into consideration the strength of the students in the school, the appellate authority did not consider the request of the Trust for registration of the secondary school for disabled persons to be reasonable. Sitting under Article 226 of the Constitution of India I do not find any illegality or irregularity or any travesty in the approach of the appellate authority.

3. Learned counsel for the petitioner contended that when the inspection of the school was made there was wholesale absenteeism. About eighty students had gone to attend polio camp at Ahmedabad, four students were sick and they were taking rest in the hospital. It has been contended that otherwise the total strength of students in the school is more than 120. I do not find any substance in the contention of the learned counsel for the petitioner. The petitioner has not produced any record either before the appellate authority or even before this Court to show that

the strength of the students in the primary school run by the Trust was more than 120. Mere assertion of the petitioner without there being any supporting evidence, cannot be relied upon and given effect.

4. In para 10 of the petition though the petitioner has made averments about the strength of the students, but those averments do not inspire any confidence. In the affidavit which has been filed by the petitioner in support of the writ petition, averments made in para 10 have been verified on the basis of the deponent's own knowledge and to the best of information which he obtained from the annexures to the petition and other relevant records and reliable sources and he believed the same to be true. Such verification of factual averments cannot be accepted. The deponent, as per his verification, derived knowledge of these facts or information from the annexures to the petition. But none of the annexures contained any evidence regarding the strength of the students in the school. How many students are there in the school, could be established by producing the attendance register as well as the returns which are being filed or some other declarations made before the authority granting registration to the primary section, and the petitioner could have produced the documentary evidence, viz cash book, fees receipt books, number of teachers, their attendance register and their salary receipts, etc., Without producing such evidence, the petitioner felt satisfied by making averments, though on affidavit, and that affidavit, as stated earlier, is not an affidavit worth relying. The deponent himself has not firmed on the strength of the students of the school, otherwise he would not have verified the averments made in para 10 on the basis of personal knowledge and not on information derived from the annexure to the petition or the relevant records.

5. Inspection of the school has been made, as it comes out from the writ petition, by an officer of the status of District Education Officer. From the averments which have been made in para 10 of the writ petition, the inspection has been made by the officer during school hours. The petitioner at no point of time had challenged the inspection report of the District Education Officer. In view of these facts the appellate authority was perfectly justified to take into consideration the report of the District Education Officer and giving finding of fact that the strength of the students in the primary school was only 27 students. This finding of fact recorded by the appellate authority does not suffer from any infirmity, which warrants any interference by this Court under Article 226 of the Constitution of India.

6. The second ground that the petitioner has not furnished 'no objection letter' of other secondary schools situated within 10 k.m. area is also a relevant consideration and that the counsel for the petitioner has conceded that no such 'no objection letter' has been produced. But he contended that 'no objection' could not have been possibly taken from the school in question and as such this ground is nothing but an extraneous consideration. I fail to see any substance in this contention. It is true that the other institutions will not give 'no objection' to the petitioner or the trust on its asking, but the trust has not made any attempt to seek such 'no objection' from the said institutions. The petitioner should have asked for 'no objection' from the other institution, though giving 'no objection letter' by such such institutions may not be within the power or control of the petitioner. Then the authority would have considered the matter and might have called for the information. But unless such exercise is undertaken by the petitioner, it was not for the authorities to call for such information from other institutions.

7. The third ground which has been given by the appellate authority has also much substance and merits. The appellate authority, after taking into consideration the strength of the students in primary section has rightly reached to the conclusion that the necessary strength of students is not likely to be there for secondary school. Yet another ground has been given by the appellate authority, that the building kept by the Trust for the school is not having the rooms of adequate space. The appellate authority has recorded a finding of fact that the rooms are of the size 7' x 7'. These findings of fact could not be successfully challenged by the petitioner. The petitioner has not produced any cogent and satisfactory evidence regarding suitability of building for the secondary school. The building which consists of rooms of the area 7' x 7' can hardly be said to be fit or adequate to run a secondary school.

8. Learned counsel for the petitioner has argued that the authority has taken into consideration extraneous factors for passing the order. The learned counsel for the petitioner submitted that the appellate authority has rejected the appeal on the ground that the school has not started standard VIII. Learned counsel for the petitioner submitted that without registration the trust could not have started standard VIII, otherwise the trust would have been liable for penal consequences. Though the appellate authority has taken into consideration that the management has not started classes of standard VIII, but it is not the only ground on which the appeal of the petitioner has been

dismissed. In all five grounds have been given out by the appellate authority. The Board has given out three grounds in support of its order. So even if this ground is taken out, or held to be not available, then too, the other grounds as stated above are sufficient to maintain the order of both the authorities. The Board has recorded categorically a finding that necessity of secondary school for handicapped persons has not been established, and looking to the strength of the students in primary section that finding cannot be said to be arbitrary. Apart from this, when there are in all only 27 students in the primary section and it is not the case of the petitioner that there is no other primary school available in the near vicinity, the necessity for secondary school has rightly been held to be not there. The students of the primary school run by the petitioner trust can be given admission in other secondary schools.

9. Much emphasis has been placed by the learned counsel for the petitioner on the face that the appellate authority as well as the Board has committed serious illegality in holding that the trust has no financial stability. Before the appellate authority the petitioner has given out that there is balance of Rs.5,01,310.93 ps in the Dena Bank, Khedabrahma Branch, and as such it cannot be said that the trust has no financial stability. If it is a fact, then the trust may have financial stability, but the other three grounds which have been given by the appellate authority and the grounds which have been given by the Board are relevant and material to the question of grant of registration and on the basis of these grounds if both the authorities have declined to grant registration, it cannot be said to be a case which warrants interference by this court in the matter. Even after excluding the aforesaid grounds, the order is sustainable on the other grounds given and accordingly they are sustained.

10. In the result this writ petition fails and the same is dismissed, with no order as to costs.

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